



IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WRIT PETITION NO. 2822 OF 2003

Single Bench

PETITIONER

OBJECTOR

: Raghunandan Prasad Sao, son
of late Sudharam Sao, aged about
74 years, resident of Juna Bilaspur,
Bilaspur, (C.G.)

V E R S U S

RESPONDENTS

Respondents 1 & 2
Original Decree
Holder.

: Sudhakar Ram Sao, son of late
Ayodhya Prasad Sao, (deceased)
through legal heirs.

P. R. No. 2626/03
Presented by Shri. Malay K. S. Shastri
dated 06.09.03

RESPONDENTS 3 & 4:
JUDGEMENT DEBTOR

1. Raghuraj Sao, son of Sudharam Sao,
aged about 70 years.
2. Basant Lal, son of late Sudharam Sao,
aged about 65 years,
Both are residents of Juna Bilaspur,
Bilaspur, (C.G.)
3. Ram Kumar Gupta, son of Sadhu Lal Gupta,
aged about 30 years, Shopkeeper,
resident of Juna Bilaspur, Tehsil
and District Bilaspur, (M.P.) now the
State of C.G.).
4. Sadhulal Gupta, son of Badri Nath Sao
aged about 57 years, Advocate,
resident of Juna Bilaspur, Tehsil
and District-Bilaspur, (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION

OF INDIA.



आदेश पत्रक

2822/03

मामला क्रमांक

W.P. 2822/03

सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>12-9-2003</u> Heard Shri M.K. Bhaduri, counsel for the petitioner. The petitioner has preferred this petition under Article 227 of the Constitution of India and challenged the order dated 5-3-2003 passed by the 3rd Additional District Judge, Bilaspur, in Execution Case No. 11-A/96 whereby the learned Executing Court has rejected the petitioner/objector's application under Order 26 Rule 1 & 2 of C.P.C. for issuing the commission to record his statement. The facts leading to filing of this writ petition are that late Sudha Ram Sao was the original decree holder in Civil Suit No. 11-A/96. An ejectment decree was passed on 5-2-1997 by the 7th Additional District Judge, Bilaspur based on compromise entered into between the parties. The original decree holder died on 14-4-97 after passing the decree. The original decree holder left behind three sons namely, Raghunandan Prasad Rao, Raghuraj Prasad Sao and Basant Lal. Two sons namely, Raghuraj Prasad Sao and Basant Lal filed an Execution before the Executing Court as legal heir of late Shri Sudha Ram Sao without impleading the petitioner/objector as a party. On coming to know about this fact, the petitioner moved an application before the Executing Court mentioning therein that he being the natural son of late Shri Sudha Ram, he is also entitled to get the fruits of the decree and, therefore, he be made party in the execution proceedings. Moreover, deceased Sudha Ram executed a will in favour of the petitioner/objector by	

[पीछे देखें]

आदेश पत्रक

मामला क्रमांक सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	which the disputed property has been bequeathed to him together with other properties. In order to ascertain the claim of the petitioner as to whether the petitioner is legal heir of the original decree holder, the Executing Court had fixed the date for recording the statement of the petitioner in which the petitioner moved an application under Order 26 Rule 1 of the C.P.C. for appointing the commissioner to record his statement on the ground that he is an old man aged about 74 years and being heart and high blood pressure patient, he is not able to come to the Court for giving his statement. An objection to that application was filed by the brother of the petitioner in which he stated that the petitioner is regularly attending the day-to-day function and the application of the petitioner is not bonafide. The learned Executing Court after hearing the arguments of both the parties and looking to the objections raised by the brother of the petitioner and ~~that~~ ^{which} was supported by the affidavit, which was not controverted by the petitioner and the court reached to the conclusion that there is no material before the court to reach to the conclusion that the petitioner is not in a position to come to the court and give his statement. Moreover, the court observed that all the necessary facilities would be provided to the petitioner if he comes before the court to give his statement. It is admitted position that the Executing Court is of Bilaspur and the petitioner is also residing at Bilaspur. Moreover, it appears from the Court's order that no material was produced before the	

[पीछे देखिये]

आदेश पत्रक

मामला क्रमांक सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	court in order to prove the claim that the petitioner is not in a position to go to the court for giving statement. On the contrary, the brother of the petitioner moved an application which was supported by the affidavit that the petitioner is attending his daily activities. The provisions of Order 26 Rule 1 of C.P.C. provides that the Court can issue a commission when the person is exempted from attending the Court or who is from sickness or infirmity unable to attend it. In the proviso it has been prescribed that commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do. In view of the above provisions, even for allowing the application the Court is required to give reasons and it is not compulsory for the Court in all probability, the commission has to be issued for examination of the witness. Moreover, in this case, the brother of the petitioner moved an application which was supported by the affidavit that the petitioner is regularly attending daily activities and the Court has taken care of the situation that if the petitioner comes before the Court and appears for giving statement, all the necessary facilities will be provided to him. In view of the above, I am of the opinion that the learned Executing Court has not passed any order which is not within the competence of the Court or which is contrary to law or which is without jurisdiction. Therefore, I do not find any reason to interfere with the order of the trial Court. The writ petition is devoid of merit and the same is liable to be dismissed and it is dismissed.	

Sd/-
L.C. Bhadoo
Judge